

FEDERAL COURT

BETWEEN:

UNITED AIRLINES, INC.

Plaintiff

And

JEREMY COOPERSTOCK

Defendant

Plaintiff's Responding Motion Record
Defendant's Motion to Compel Answers

Dated: March 27, 2014

GOWLING LAFLEUR HENDERSON LLP
3700-1 Place Ville Marie
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AND TO: Jeremy Cooperstock
392 Grosvenor Street
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Defendant

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FEDERAL COURT

BETWEEN:

UNITED AIRLINES, INC.

Plaintiff

And

JEREMY COOPERSTOCK

Defendant

AFFIDAVIT OF CAROLINA BUSCIO

I, **Carolina Buscio**, of the City of Montréal, in the Province of Québec, **MAKE OATH AND SAY:**

1. I am a legal assistant employed by the law firm Gowling Lafleur Henderson LLP, the solicitors for the Plaintiff, United Airlines, Inc., and as such have personal knowledge of the facts set out herein, except where the facts are stated to be based on information and belief, in which case I believe that the facts as stated are true.
2. Attached as "Exhibit A" to my Affidavit is an excerpt from the examination for discovery of Scott Wilson, which took place on October 2, 2013.

SWORN before me at the City of)
Montreal, in the province of Quebec,)
this 27th day of March, 2014.)

A Commissioner, etc.



Carolina Buscio

This is Exhibit "A" to the Affidavit of Carolina Buscio Sworn Before Me this 27th Day Of
March, 2014

Lina Lastoria

Commissioner



1 35. Q. Approximately?

2 A. Well, I am not even sure I can
3 approximately, except to say that like many people
4 I mistyped 'United' and typed U-N-T-I-E-D.com and
5 ended up at Untied.com.

6 36. Q. And this was before you went to work for
7 United?

8 A. Yes, that is right.

9 37. Q. Are you aware that this examination was
10 originally scheduled for September 5, 2013?

11 A. Yes. Yes, I am.

12 38. Q. Can you explain why your counsel required
13 the rescheduling of the examination?

14 Me HÉLÈNE D'IORIO:

15 Mr. Beliveau, I really don't know where we are
16 going with that. I mean, we wrote letters.

17 It is fully explained in the letter why Mr. --

18 Me LOUIS BELIVEAU:

19 Yes, and if we don't --

20 Me HÉLÈNE D'IORIO:

21 I don't see how it is relevant today. I mean,
22 are you objecting to the fact that the matter
23 was adjourned? Are you objecting to the fact
24 that the examination was adjourned? You
25 certainly did not object; Mr. Cooperstock was

1 very nice about it, and we looked for an
2 appropriate date to have it rescheduled, so I
3 am not sure where you are going with this line
4 of questioning.

5 Me LOUIS BELIVEAU:

6 Where I am going with this line is that I
7 think that there are being unnecessary delays
8 created by your side, and I would like to ask
9 the question if Mr. Wilson is aware of the
10 reason why the examination was rescheduled,
11 and Mr. Wilson, if you could please explain
12 why this examination was rescheduled.

13 | Me HÉLÈNE D'IORIO:

14 But Mr. Beliveau, I mean we are not here to
15 debate today whether you think there have been
16 delays or not in this proceeding; that is not
17 one of the issues at all.

19 BY M^E LOUIS BELIVEAU:

20 39. Q. I am going to ask the question again. Mr.
21 Wilson, could you please explain to me why you
22 weren't available as originally scheduled?

23 A. Yes, I am a practicing Jew, and the High
24 Holidays fell on a week that, when we originally
25 scheduled this. I was not aware of that date

1 until, with great apologies to both yourselves and
2 to my counsel, I asked that this be moved to the
3 closest possible date, and they did, and I am
4 appreciative again for that.

5 40. Q. That is okay. What shul did you attend
6 for Rosh Hashanah?

7 Me HÉLÈNE D'IORIO:

8 No, no, I instruct the witness not to answer
9 that question; that is totally inappropriate,
10 and totally irrelevant.

11 Me LOUIS BELIVEAU:

12 I think don't think it is totally
13 inappropriate. I --

14 Me HÉLÈNE D'IORIO:

15 It is totally inappropriate and irrelevant.

16 Me LOUIS BELIVEAU:

17 Well, it is up to you, Mr. Wilson.

18 Me HÉLÈNE D'IORIO:

19 So I instruct the witness not to answer the
20 question.

22 BY Me LOUIS BELIVEAU:

23 41. Q. Let me try a different question: did you
24 attend shul for Rosh Hashanah?

1 Me HÉLÈNE D'IORIO:

2 No, I instruct the witness not to answer the
3 question; that is highly inappropriate. We
4 are not here to debate the religious practices
5 of Mr. Wilson.

6

7 OBJECTION NO. 1: Let me try a different
8 question: did you attend shul for Rosh
9 Hashanah?

10

11 BY Me LOUIS BELIVEAU:

12 42. Q. What is the typical food dish eaten on
13 Rosh Hashanah?

14

15 OBJECTION NO. 2: What is the typical food
16 dish eaten on Rosh Hashanah?

17

18 Me HÉLÈNE D'IORIO:

19 No, I instruct the witness not to answer the
20 question.

21 Me LOUIS BELIVEAU:

22 I am not asking what Mr. Wilson ate on Rosh
23 Hashanah, I am asking what a typical food dish
24 eaten on Rosh Hashanah is.

25

1 Me HÉLÈNE D'IORIO:

2 I instruct the witness not to answer the
3 question; it is not relevant to any of the
4 issues in this case, and Mr. Beliveau, if you
5 want to continue with that type of questioning
6 I will put a stop to this discovery and I will
7 go to the Court.

8

9 BY Me LOUIS BELIVEAU:

10 Well, we will give you a few other chances to
11 get angry to that point before, I am sure, but
12 that is probably enough questions about Rosh
13 Hashanah.

14 43. Q. Are you aware of the Poor Show site, Mr.
15 Wilson?

16 A. Say again, the Poor Show site?

17 44. Q. Yes, the Poor Show site.

18 A. Yes.

19 45. Q. Perhaps we could hand you tab 4; it is a
20 letter from Brinks Hofer Gilson and Lione, who I
21 understand were representing your company at the
22 time?

23 A. Yes, I have it.

24 46. Q. We would like to introduce this as an
25 exhibit, as well.

Court File No. T-2084-12

FEDERAL COURT

BETWEEN:

UNITED AIRLINES, INC.

Plaintiff

And

JEREMY COOPERSTOCK

Defendant

RESPONDING WRITTEN REPRESENTATIONS OF UNITED AIRLINES, INC.

(Defendant's Motion to Compel Answers)

OVERVIEW

1. These written representations are filed in response to Dr. Jeremy Cooperstock's ("the Defendant") motion for an Order requiring United Airlines, Inc's (the "Plaintiff") representative, Mr. Scott Wilson, to re-attend examination for discovery and provide answers to questions asked during examinations for discovery.
2. The Plaintiff submits that none of the presently at issue questions are proper or need to be answered.

PART I - FACTS

3. United Airlines, Inc. commenced the within proceeding for *inter alia* copyright and trademark infringement, passing off, and depreciation of goodwill against the Defendant on November 19, 2012. The Defendant has filed his Statement of Defence. United Airlines,

Inc. filed an amended reply on June 27, 2013.

9

**Amended Statement of Claim dated November 19, 2012,
Defendants' Motion Record ("DMR"), Tab 2**

**Amended Statement of Defence dated June 20, 2013, DMR,
Tab 3**

Amended Reply dated June 27, 2013, DMR, Tab 4

4. The examination for discovery of the Plaintiff's representative, Mr. Scott Wilson, took place on October 2, 2013.

PART II - ISSUE

5. The sole issue to be determined on this motion is whether Mr. Scott Wilson ought to re-attend examination for discovery and provide answers to questions set out in the attached Schedule "A".

PART III – SUBMISSIONS

A. General Principles for Examinations for Discovery

6. Examinations for discovery are subject to Rules 240-242 of the *Federal Courts Rules*. Rule 240 provides that a person being examined for discovery shall answer, to the best of his knowledge, information and belief, any question that is relevant to any unadmitted allegation of fact in the pleadings or name or address of any person expected to have knowledge relating to a matter in question, namely:

A person being examined for discovery shall answer, to the best of the person's knowledge, information and belief, any question that

- (a) is relevant to any unadmitted allegation of fact in a pleading filed by the party being examined or by the examining party; or
- (b) concerns the name or address of any person, other than an expert witness, who might reasonably be expected to have knowledge relating to a matter in question in the action.

Rule 240, *Federal Courts Rules*, SOR/98-106, United Airlines, Inc.'s Responding Record ("United RR"), Tab 3

7. Rule 242 lists that the proper grounds for objection to a question asked in an examination for discovery, namely:
 - (a) The answer is privileged;
 - (b) The question is not relevant to any unadmitted allegation of fact in a pleading filed by the party being examined or by the examining party;
 - (c) The question is unreasonable or unnecessary; or
 - (d) It would be unduly onerous to require the person to make the inquiries referred to in rule 241.

Rule 242, *Federal Courts Rules*, SOR/98-106, United RR, Tab 3

8. The burden rests upon the moving party in a motion to compel to show that the information sought may directly or indirectly advance its own case or damage the case of an opponent.

***Apotex Inc v Sanofi-Aventis*, 2011 FC 52 at para 17, United RR, Tab 4**

9. The Federal Court has consistently stated that the discovery process is not a fishing expedition and that there must be limitations placed on discovery. The Court retains a residual discretion to decide not to compel the production of technically relevant documents where such production would have no benefit or could not be used to advance a party's case.

***Pharmacia SpA v Faulding (Canada) Inc* (1999), 3 CPR (4th) 126 (FCA) at para 3, United RR, Tab 5**

***Apotex Inc v Sanofi-Aventis*, 2011 FC 52 at para 20, United RR, Tab 4**

10. This Court has identified six principles that place limitations on the scope of discovery:
 - (a) The documents to which parties are entitled are those which are relevant. Relevance is a matter of law, not discretion. The test to apply, in determining relevance, is whether information obtained may directly or indirectly advance one party's case, or damage that of the

other party.

- (b) Questions which are too general, or which seek an opinion, or are outside the scope of a proceeding, need not be answered.
- (c) Discovery is confined to matters relevant to the facts which have been pleaded, rather than to facts which a party proposes to prove and thus relevance, in the context of discovery, limits questions to those that may prove or disprove allegations of fact which have not been admitted.
- (d) A court should not compel answers which, although perhaps relevant, are not likely to advance the party's legal position.
- (e) Before requiring an answer to a discovery question, the court should weigh the probability of the usefulness of the answer against the time, trouble, expense and difficulty which might be involved in obtaining it: "One must look at what is reasonable and fair under the circumstances..."
- (f) Fishing expeditions undertaken through far-reaching, vague or irrelevant questions are to be discouraged.

Hayden Manufacturing Co v Canplas Industries Ltd (1998), 83 CPR (3d) 19 (FC) at para 6, United RR, Tab 6

11. The purpose of discovery is to obtain admissions to facilitate proof of all the matters which are properly in issue between the parties. The question of whether a document "relates" to an issue in the case depends upon a reasonable interpretation of the pleadings. The party demanding a document must demonstrate that the information in the document may, either directly or indirectly, advance its own case or damage the case of an opponent. Moreover, a party may not enlarge the area of discovery by making irrelevant allegations which, even if substantiated, could not affect the result of the action.
12. Compelling answers to discovery questions involves an exercise of discretion. A party is not entitled to discovery merely by showing that the answer might be relevant to prove material facts. The following factors are to be considered in the exercise of discretion:
 - (a) the generality and breadth of a question;
 - (b) the extent of the burden that would be imposed by requiring an answer;
 - (c) the degree of relevance of the requested information;

- (d) the availability of other potential evidence of the facts in question; and
- (e) whether the answer requires fact or opinion of law.

T-Mobile USA Inc v Telus Corporation, 2010 FC 455 at para 4, United RR, Tab 7

Apotex Inc v Sanofi-Aventis, 2011 FC 52 at para 21, United RR, Tab 3

13. Questions are unreasonable or unnecessary or unduly onerous if the probative value and the usefulness of the answer to the examining party would appear to be, at the most, minimal and where, on the other hand, obtaining the answer would involve great difficulty and a considerable expenditure of time and effort to the party being examined. Similarly, questions which can be answered on the basis of discovery already provided or which seek the creation of new documents have been in many circumstances to be unreasonable and onerous.

Reading & Bates Const. Co. v. Baker Energy Resources Co. (1988), 24 CPR (3d) 66 at p. 71 (FCTD) , United RR, Tab 8

Contour Optik, Inc. v. Viva Canada Inc. (2007), 60 CPR (4th) 33; Affg 50 CPR (4th) 414 (FC); Affg 45 CPR (4th) 31 (FCA), United RR, Tab 9

B. Questions at Issue

14. For the reasons stated below and set out in attached Schedule "A" for each question at issue, the Plaintiff submits that all of its refusals are proper.
15. It should be noted that in the interest of moving the within proceeding along quickly and efficiently, the Plaintiff has maintained the Defendant's categorization of questions while disagreeing with same. The Plaintiff respectfully submits that the manner in which the Defendant has chosen to characterize the questions itself highlights the lack of relevance of the questions asked.

Not Relevant to the Facts Pledged

16. Pursuant to Rule 240 of the Federal Courts Rules, the ambit of the questions must be restricted to unadmitted allegations of fact in the pleadings. As such, the propriety of any question on discovery must be determined on the basis of its relevance to the facts pleaded in the Statement of Claim or Statement of Defence, which constitutes its cause of action or defence, rather than on its relevance to facts which the plaintiff or defendant proposes to prove to establish the facts constituting its cause of action. In this regard, relevance is determined by the pleadings.

Carnation Foods Co. Ltd. v. Amfac Foods Inc. (1982), 63 CPR (2d) 203 at 204-205 (FCA), United RR, Tab 10

Hayden Manufacturing Co. v. Canplas Industries Ltd. (1998), 83 CPR (3d) 19 at para. 6[3.] (FCTD), United RR, Tab 6

Reading & Bates Construction Co. v. Baker Energy Resources Corp. (1988), 24 CPR (3d) 66 at 71[3.] (FCTD), United RR, Tab 8

Rule 240, Federal Courts Rules, SOR/98-106, United RR, Tab 3

17. Concerning questions 700, 355, 356, 357, 363, 367, 368, 435, 437, 448, 455, 449, 456, 463, 133, 134, 135, 136, 146, 147, 148, 149, 169, 170, 171, 172, 211, 212, 550-552, 556-557, 562-564, 565, and 545-546, none of the these questions are relevant to any of the issues pleaded and the refusals are proper. More specifically, none of these questions are relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement. Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, *inter alia*, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.

18. Concerning question 463, Plaintiff has confirmed that it will not be claiming any monetary compensation from the Defendant in the within proceeding. Furthermore, this issue has been the subject of two Orders from the Court, that of Prothonotary Morneau dated January 3, 2014 and that of Mr. Justice Roy dated February 20, 2014. Accordingly,

this question is not relevant and the refusal is proper.

19. Specifically with respect to question 133, this question is improper because it relates to situations and circumstances in and around the year 2000. The within proceeding is concerned, *inter alia*, with the Defendant's infringing activities beginning in and around the year 2012, not 2000. Notwithstanding the Plaintiff's additional basis for refusing to answer question 133 as detailed below, question 133 is not relevant to the pleadings in the within proceeding and therefore properly refused.

**Amended Statement of Claim dated November 19, 2012, DMR,
Tab 2, at para 15**

Monetary Compensation No Longer at Issue Between the Parties and Not Relevant

20. Questions 367, 368, 435-437, 443, 448 and 455 are properly refused because the Plaintiff has indicated that it will not seek monetary compensation from the Defendant, in view of the answers provided by the Defendant during the course of his examination for discovery. Questions 367, 368, 435-437, 443, 448 and 455 would go to quantum of damages and are therefore no longer relevant to the points at issue between the parties and therefore are properly refused.

***Hayden Manufacturing Co v Canplas Industries Ltd (1998), 83 CPR
(3d) 19 (FC) at para 6, United RR, Tab 6***

Refusals Based on Non-Relevance to the Facts Pleaded and in the Nature of a Fishing Expedition

21. Question 211 is also properly refused for being not relevant to the facts pleaded and amounts to a fishing expedition.
22. Question 211 relates to minutes and internal correspondence of United Airlines management regarding the August 23, 2012 version of the Defendant's website. This question neither seeks answers to advance the Defendant's position nor to damage the Plaintiff's position. Accordingly, this question is not relevant and is in the nature of a fishing expedition and the refusal is proper.

Hayden Manufacturing Co v Canplas Industries Ltd (1998), 83 CPR (3d) 19 (FC) at para 6, United RR, Tab 6

GSC Technologies Corp. v. Pelican Int'l Inc., 2009 FC 223, United RR, Tab 11

Refusals Based on Vagueness

23. Questions 133, 134, 135, 136, 146, 147, 148, 149, 169, 170, 171, and 172 are also vague.
24. Questions that are far-reaching, vague or irrelevant to the allegations plead, amount to fishing expeditions and are inappropriate.

Hayden Manufacturing Co v Canplas Industries Ltd (1998), 83 CPR (3d) 19 (FC) at para 6, United RR, Tab 6

Refusals Based on Legal/Expert Opinion

25. Questions 435, 437, 443, 114, 136, 149, 172, and 203 are properly refused for requiring a legal opinion.
26. Questions that require legal opinions are not proper and need not be answered.

Johnson & Johnson Inc. v. Arterial Vascular Engineering Canada, Inc., (2001), 14 CPR (4th) 134 at 136, United RR, Tab 12

27. Questions 435, 437, 443, and 114 are properly refused for requiring an expert opinion.
28. Questions that require expert opinion are not a proper subject for discovery and need not be answered.

Apotex Inc. v. Pharmascience Inc. (2004), 36 CPR (4th) 218 at para. 19(1) (FC); aff'd (2005), 39 CPR (4th) 297 (FCA), United RR, Tab 13

Foseco Trading A.G. v. Cdn. Ferro Hot Metal Specialties (1991), 36 CPR (3d) 35 at 51-52 (FCTD), United RR, Tab 14

Refusals Based Expression of Position in Terms of Mental Attitudes

29. Questions 133, 134, 135, 136, 146, 147, 148, 149, 169, 170, 171, and 172 are properly

refused for asking a party express its position in terms of mental attitudes.

30. A party cannot be asked to express its position in terms of mental attitudes.

Raymor Industries Inc. c. Canada (Conseil national des recherches),
2008 CarswellNat 3199, 2008 CF 979 (Proth.), United RR, Tab 15

Refusals Based on Privilege

31. Solicitor-client privilege protects communications between solicitors and their clients for the purposes of obtaining legal advice. The privilege is “broad and all-encompassing” and should only be set aside in unusual circumstances.

R v McClure, 2001 SCC 14 at para 24, United RR, Tab 16

Pritchard v Ontario (Human Rights Commission), 2004 SCC 31 at para 17, United RR, Tab 17

32. Solicitor-client privilege is not limited to the realm of private law. “If an in-house lawyer is conveying advice that would be characterized as privileged, the fact that he or she is ‘in-house’ does not remove the privilege, or change its nature.”

Pritchard v Ontario (Human Rights Commission), 2004 SCC 31 at para 21, United RR, Tab 17

33. In addition, litigation privilege applies to communications between a lawyer and third parties or a client and third parties, or to communications generated by the lawyer or client for the dominant purpose of litigation when litigation is reasonably contemplated, anticipated or ongoing.

Commercial Union Assurance Co Plc v MT Fishing Co Ltd, [1999]
FCJ. No. 123 (FCTD) at para 5, United RR, Tab 18

34. Privilege has been claimed for questions 133, 134, 135, 136, 146, 147, 148, 149, 170, 171, 172, 137, 153, 157, 159, 175, 179, 211, and 212. In the context of a motion to compel, questions that fall under the heading of privilege need not be answered. Therefore, these questions are properly refused.

Rule 242, *Federal Courts Rules*, SOR/98-106, United RR, Tab 3

Defence of Laches is Not Applicable and In Any Event Would Go To Quantum and Thus Is Not Relevant

35. Questions 137, 153, 157, 159, 175, and 179 in addition to being properly refused on the basis of privilege as detailed in the preceding section, are also properly refused because they do not relate to issues in dispute between the parties.
36. The defence of laches is not relevant since the within proceeding pertains to the redesign of the Defendant's website in 2012. Furthermore, the defence of laches, if it had any application, would go to the quantum of damages. Given that the Plaintiff has advised that it will not seek monetary compensation from the Defendant, the questions are not relevant. Accordingly, the Defendant's defence of laches is not relevant to the issue of damages for infringement.

Amended Statement of Claim, para. 15, DMR, Tab 2

37. Questions 137, 153, 157, 159, 175, and 179 are properly refused as being not relevant and therefore are properly refused.

Refusals Based on Improper Question under the Rules and in the Nature of a Fishing Expedition

38. Questions 493-495 are properly refused on the basis that they are improper questions under the rules and are in the nature of a fishing expedition.
39. The Defendant is asking "what witnesses [Plaintiff] intends to call/what topics will they testify on?". It is the Defendant's position that the Plaintiff is required to answer these series of questions under Rule 240(b).
40. This is an improper use of Rule 240(b). The calling of any witnesses and/or topics any such witnesses will they testify on is not provided for under Rule 240(b). Rule 240(b) states:

A person being examined for discovery shall answer, to the best of the person's knowledge, information and belief, any question that

[...]

(b) concerns the name or address of any person, other than an expert witness, who might reasonably be expected to have knowledge relating to a matter in question in the action.

Rule 240(b), *Federal Courts Rules*, SOR/98-106, United RR, Tab 3

41. Moreover, questions 493-495 amount to a fishing expedition and are improper.

***Hayden Manufacturing Co v Canplas Industries Ltd* (1998), 83 CPR (3d) 19 (FC) at para 6, United RR, Tab 6**

***GSC Technologies Corp. v. Pelican Int'l Inc.*, 2009 FC 223, United RR, Tab 11**

42. Questions 493-495 are thus properly refused.

Refusals Based on Being Impossible to Ascertain

43. Questions 355 and 363 seek information relating the numbers of complaints forwarded from Untied.com to the Plaintiff. As discussed above, questions 355 and 363 are not relevant to the any of the issues in the pleadings and improper for at least this reason.

44. Additionally, questions 355 and 363 are not within the Plaintiff's means of knowledge, and as such are also improper. Furthermore, it is an abuse of process for one party to require the other party to expand great time and effort to obtain information within its means of knowledge.

***Andres Wines Ltd. v. T.G. Bright & Co.* (1978), 41 CPR (2d) 113, United RR, Tab 19**

45. Questions 355 and 363 are thus properly refused.

PART IV – ORDER SOUGHT

46. The Plaintiff respectfully submits that, if any questions are ordered to be answered, the Court should order that the answers be provided in writing. The Plaintiff's representative, Scott Wilson, was, during the course of his examination, asked a number of highly inappropriate and improper questions relating, amongst other things, to his religious beliefs and practices. It is submitted that these circumstances alone warrant that the Court

not require the re-attendance of Mr. Wilson.

Affidavit of Carolina Buscio, United RR, Tab 1

47. An Order:

- (a) Dismissing the Defendant's motion;
- (b) Awarding to the Plaintiff the costs of this motion; and
- (c) Such further or other relief as to this Honourable Court may seem just

All of which is respectfully submitted this 27th day of March, 2014

Hélène D'Iorio
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Hélène D'Iorio
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AND TO:

Jeremy Cooperstock
392 Grosvenor Street
Westmount, Quebec, H3Z 2M2
Defendant

SCHEDULE "A"

Court File No. T-2084-12

FEDERAL COURT

BETWEEN:

UNITED AIRLINES, INC.

Plaintiff

And

JEREMY COOPERSTOCK

Defendant

ANSWERS TO REFUSALS

EXAMINATION FOR DISCOVERY OF MR. SCOTT WILSON (held October 2, 2013)

(Defendant's Motion to Compel Answers)

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
A. Plaintiff knowingly chose to use confusing domain name					
700	360	Why did United Airlines choose to move its operations from the perfectly acceptable short three letter UAL.com domain to United.com, which is longer and had the possibility of confusion with the Defendant's site?	Refused. Not relevant to any of the issues pleaded.	Relevance:	<p>This is a proper refusal.</p> <p>a) The Plaintiff is alleging customer confusion resulting from the Defendant's website (paras. 21, 23 of the Statement of Claim)</p> <p>b) it is common ground that the Defendant began to use the domain united.com, 20 months before the Plaintiff began using the domain, united.com</p> <p>c) the Defendant alleges that any alleged confusion by passengers arises from the Plaintiff's decision to use the domain name united.com (paras. 19-24 of the Defence)</p> <p>a) This question is not relevant to any of the issues pleaded. This question is not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.</p> <p>b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
B. Plaintiff is the maker of its own misfortune					
355 U-36	194 (192)	To indicate how many complaints were forwarded via and from Untied.com to Ms. Harvill and Mr. Goodwin at United Airlines between October 1998 and September 2000.	<u>Refused.</u> This question is not relevant to any of the issues pleaded and in any event the Plaintiff cannot ascertain this information.	<u>Relevance:</u> a) the Plaintiff is alleging customer confusion relating to passengers who submit their complaints through the Defendant's website (para. 16 of Statement of Claim)	<p>This is a proper refusal.</p> <p>a) This question is not relevant to any of the issues pleaded. This question is not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.</p> <p>b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use 'confusing domain name'". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of</p> <p>The Plaintiff can easily answer questions 355 and 363 by consulting its own complaints database.</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>c) The answer to this question is also not within the Plaintiff's means of knowledge, but rather within the Defendant's means of knowledge.</p> <p>It is an abuse of process for one party to require the other party to expand great time and effort to obtain information within its means of knowledge.</p> <p>These are proper refusals.</p> <p>a) These questions are not relevant to any of the issues pleaded. These questions are not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.</p> <p>b) Furthermore, these questions are characterized by the Defendant under the heading</p>
356 O-57	195	Produce records of the complaints received by United Airlines via United.com.	<u>Refused</u> . Not relevant to any of the issues pleaded.		
357 O-58	197	To provide the date when Ms. Harvill's email address ceased accepting complaints from Untied.com.	<u>Refused</u> . Not relevant to any of the issues pleaded.		

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>“Plaintiff knowingly chose to use confusing domain name”. The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.</p>
363	199			<p>Refused. This is impossible to ascertain, and this question is not relevant to any of the issues pleaded in any event.</p>	<p>This is a proper refusal.</p> <ol style="list-style-type: none"> <li data-bbox="992 158 1237 1948">This question is not relevant to any of the issues pleaded. This question is not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement. <li data-bbox="1269 158 1418 1948">Furthermore, these questions are characterized by the Defendant under the heading “Plaintiff knowingly chose to

Q#	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.</p> <p>c) The answer to this question is also not within the Plaintiff's means of knowledge, but within the Defendant's means of knowledge.</p> <p>It is an abuse of process for one party to require the other party to expand great time and effort to obtain information within its means of knowledge.</p>
367	202	How many complaints does United receive	Refused.	Not relevant to any of the issues	<p><u>Relevance:</u></p> <p>These are proper refusals.</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
O-62		every year?	pledged.		a) Plaintiff alleges that it is “rated the world’s most admired airline” para. 4 of Statement of Claim)
368	203	How many complaints has United received since the merger with Continental?	Refused. Not relevant to any of the issues pleaded.	b) the Plaintiff alleges that Defendant’s activities have had the effect of depreciating the value of the goodwill attaching to the Plaintiff’s trade-marks (para. 29 of Statement of Claim)	a) These questions are not relevant to any of the issues pleaded. This question is not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.
O-63				c) the Defendant alleges that the Plaintiff is the most complained about airline (para. 54 of the Defence)	b) Furthermore, these questions are characterized by the Defendant under the heading “Plaintiff knowingly chose to use confusing domain name”. The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant’s website.
				d) this speaks to the causality of the Defendant’s conduct and the damages allegedly suffered by the Plaintiff	c) These questions are not relevant if characterized to relate to the questions of damages since the Plaintiff
				e) the Defendant alleges that it is the Plaintiff’s conduct itself, and not the Defendant’s activities complained about, that have the effect of	

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
435, 437 O-70 – O-71	229- 230	So would you say that passengers were happy with the results of the merger?/ So would you say that passengers were happy with the results of the merger The next question: would you say that the merger caused damage to the goodwill of United?	Refused. Not relevant to any of the issues pleaded and question goodwill about requires a legal interpretation and/or expert opinion.	depreciating the value of the goodwill attaching to the Plaintiff's trade-mark (para. 54 of the Defence)	<p>has indicated it will not seek monetary compensation from the Defendant.</p> <p>These are proper refusals.</p> <p>a) These questions are not relevant to any of the issues pleaded. These questions are not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.</p> <p>b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of</p>

Q#	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>the Defendant's website.</p> <p>c) Furthermore, answer to these questions require a legal opinion and/or expert opinion and therefore are not a proper subject for discovery.</p> <p>d) These questions are not relevant if characterized to relate to the questions of damages since the Plaintiff has indicated it will not seek monetary compensation from the Defendant.</p> <p>This is a proper refusal.</p> <p>a) Answer to this question requires a legal opinion and/or expert opinion and therefore are not a proper subject for discovery.</p> <p>b) These questions are not relevant if characterized to relate to the questions of damages since the Plaintiff has indicated it will not seek monetary compensation from the</p>
443 O-72	233	Would you agree with me that the loss of goodwill was a result of the bad treatment, and had nothing to do with Dr. Cooperstock's alleged actions?		<p><u>Refused.</u> Requires a legal interpretation and/or expert opinion.</p>	

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
448 O-73	235	Are the events described in the video true? [exhibit 29]	Refused. Not relevant to any of the issues pleaded.	Defendant.	These are proper refusals. a) These questions are not relevant to any of the issues pleaded. These questions are not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.
455 O-79	241	Are the events described in the second video true? [exhibit 29]	Refused. Not relevant to any of the issues pleaded.		b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.

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Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					c) These questions are not relevant if characterized to relate to the questions of damages since the Plaintiff has indicated it will not seek monetary compensation from the Defendant.
C. Damages allegedly suffered by United -- paragraph 31 of the Statement of Claim					
449 O-74	235	Have you calculated the amount of revenue that United allegedly lost as a result of this video? [exhibit 29]	<u>Refused.</u> Not relevant to any of the issues pleaded.	<u>Relevance:</u> a) although the Plaintiff is no longer claiming monetary compensation as a remedy, it is alleging that the Defendant's activities cause the Plaintiff to suffer considerable damages (para. 31 of Statement of Claim);	These are proper refusals.
456 O-80	242	Have you calculated the amount of revenue that United allegedly lost as a result of the second video? [exhibit 29]	<u>Refused.</u> Not relevant to any of the issues pleaded.	b) thus, whether and to what extent the Plaintiff has suffered damages caused by the Defendant, is relevant; and c) whether Plaintiff has suffered damages caused	a) These questions are not relevant to any of the issues pleaded. These questions are not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement. b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
				by other individuals against whom the Plaintiff has taken no legal action, relates to abuse of process (paras. 59-63 of the Defence)	<p>UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.</p>
463	O-85	246		<p><u>Refused</u></p> <p>Provide specific answers, so specific type of damages, specific dollar amounts, specific prejudice that United suffered or claims to suffer as a result of the infringement which it alleges that Untied.com/ Jeremy Cooperstock is responsible for?</p>	<p>This is a proper refusal.</p> <p>a) These questions are not relevant to any of the issues pleaded. These questions are not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.</p> <p>b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.
D. History of Defendant's website as known to the Plaintiff					
114 O-15	82	As United Airlines, do you see any trade mark or copyright objections to this webpage as it now stands?	<u>Refused.</u> The question calls for a legal interpretation and requires expert opinion.	The questions were not related to mental attitudes, but rather, seeking a factual response as to whether the Plaintiff considered the Defendant's website to be a source of potential customer confusion or any other harm, earlier in its history.	<p>This is a proper refusal.</p> <p>Answer to this question requires a legal opinion and/or expert opinion and therefore are not a proper subject for discovery.</p>
133 O-17	91	Does United have any concerns about trade mark or copyright at this stage/how did United "feel" in this regard, as of the year 2000 (with reference to Exhibit 9)?	<u>Refused.</u> United's "concerns" or "feelings" as of 2000 are a) not relevant to any of the issues pleaded; b) the question is vague	The Plaintiff's	<p>This is a proper refusal.</p> <p>a) This question is not relevant to any of the issues pleaded.</p> <p>This question is not relevant to any or all of trade-mark infringement, confusion,</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
			<p>because the meaning of “concerns” or “feelings” cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes and d) any discussions about infringement of the Plaintiff’s rights are subject to solicitor-client privilege.</p> <p>Relevance:</p>	<p>representative and no difficulty ascertaining the meaning of “what United felt” and “what was United’s concern” in answering undertakings #2 and #3.</p> <p>a) timeliness of the action, in not bringing legal claims for more than 15 years (para. 25-33 and 56-57 of the Defence);</p> <p>b) bad faith (para. 60 of the Defence);</p> <p>c) allegations of infringement of trademark and copyright (para. 7-14 of Plaintiff’s amended Statement of Claim).</p>	<p>readily similar</p> <p>This question is also not relevant because it relates to situations and circumstances in and around the year 2000. The within proceeding is concerned, <i>inter alia</i>, with the Defendant’s infringing activities beginning in and around the year 2012.</p> <p>b) Furthermore, these questions are characterized by the Defendant under the heading “Plaintiff knowingly chose to use confusing domain name”. The Plaintiff is alleging, <i>inter alia</i>, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant’s website.</p> <p>Plaintiff has provided no evidence to support solicitor-client privilege</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
				on these questions.	<p>c) This question is also vague. Questions of this nature amount to fishing expeditions and are inappropriate.</p> <p>d) This question is also inappropriate for asking the Plaintiff to express its position in terms of mental attitudes.</p> <p>e) This question relating to discussions about infringement of the Plaintiff's rights is also inappropriate for relating to subject matter protected by privilege.</p> <p>In the context of a motion to compel, questions that fall under solicitor-client privilege need not be answered.</p>
134 O-18	92	Was United concerned with the use of the word "Untied" or the font as of the year 2000? (with		<p><u>Refused.</u> United's "concerns" as of 2000 are a) not relevant to any of the issues</p>	<p>This is a proper refusal.</p> <p>For the same reasons as question</p>

Q#	Pg.	Question	Objection	Defendant's position	Plaintiff's position
		reference to Exhibit 9)	pledged; b) the question is vague because the meaning of "concerns" cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes and d) any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.	133 above.	
135 O-19	92	Was United worried about the colour scheme employed in the logo or the webpage layout as of the year 2000?	<u>Refused.</u> Whether United was "worried" as of 2000 is a) not relevant to any of the issues pleaded; b) the question is vague because the meaning of "concerns" cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes and d) any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.	This is a proper refusal. For the same reasons as question 133 above.	

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
136 O-20	92	Was United worried that this might be infringing on United's trademarks or copyright as of the year 2000?	client privilege. <u>Refused.</u> Whether United was "worried" as of 2000 is a) not relevant to any of the issues pleaded; b) the question is vague because the meaning of "worried" cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes; d) requires a legal interpretation and e) any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.		<p>This is a proper refusal.</p> <p>a) This question is not relevant to any of the issues pleaded. This question is not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.</p> <p>b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.</p> <p>c) This question is also vague.</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>Questions of this nature amount to fishing expeditions and are inappropriate.</p> <p>d) This question is also inappropriate for asking the Plaintiff to express its position in terms of mental attitudes.</p> <p>e) Answer to this question requires a legal opinion and/or expert opinion and therefore is not a proper subject for discovery.</p> <p>f) This question relating to discussions about infringement of the Plaintiff's rights is also inappropriate for relating to subject matter protected by privilege.</p> <p>In the context of a motion to compel, questions that fall under solicitor-client privilege need not be answered.</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
146 U-15	98	To verify if United had any concerns about trade-marks or copyright at the date of Exhibits 11 and 12 (August 25, 2005 and March 6, 2007).	<u>Refused.</u> United's "concerns" as of 2005-2007 are a) not relevant to any of the issues pleaded; b) the question is vague because the meaning of "concerns" cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes and d) any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.		This is a proper refusal. For the same reasons as question 133 above.
147 O-22	98	Was United concerned about the use of the word "United" or was United concerned about the font at the date of Exhibits 11 and 12 (August 25, 2005 and March 6, 2007).	<u>Refused.</u> United's "concerns" as of 2005-2007 are a) not relevant to any of the issues pleaded; b) the question is vague because the meaning of "concerned" cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes and d)		This is a proper refusal. For the same reasons as question 133 above.

Q#	Pg.	Question	Objection	Defendant's position	Plaintiff's position
			any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.		
148 O-23	99	Was United worried about the colour scheme employed in the logo or the webpage layout at the date of Exhibits 11 and 12 (August 25, 2005 and March 6, 2007)?	<u>Refused.</u> Whether United was "worried" as of 2005-2007 are a) not relevant to any of the issues pleaded; b) the question is vague because the meaning of "worried" cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes and d) any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.	<u>This is a proper refusal.</u> For the same reasons as question 133 above.	
149 O-24	99	Was United worried that this might be infringing on United's trade-marks or copyrights?	<u>Refused.</u> Whether United was "worried" as of 2005-2007 is a) not relevant to any of the issues pleaded; b) the question is vague because the meaning	<u>This is a proper refusal.</u> For the same reasons as question 136 above.	

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
			of "worried" cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes; d) calls for a legal interpretation and e) any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.		<p>This is a proper refusal.</p> <p>a) This question is not relevant to any of the issues pleaded. This question is not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.</p> <p>b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, <i>inter alia</i>, infringement of its registered</p>
169 U-18	108	To verify if United had concerns about trade mark or copyright issues regarding the Untied.com webpage on September 3, 2011 (Exhibit 15).	United's <u>Refused</u> . "concerns" as of 2011 are not relevant to any of the issues pleaded, the question is vague because the meaning of "concerns" cannot be ascertained and witness cannot be asked to express his position in terms of mental attitudes.		

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.</p> <p>c) This question is also vague. Questions of this nature amount to fishing expeditions and are inappropriate.</p> <p>d) This question is also inappropriate for asking the Plaintiff express its position in terms of mental attitudes.</p>
170 O-30	108	Was United concerned about the word "United" or the font (as depicted on the United.com webpage on September 3, 2011 (Exhibit 15))?		<p><u>Refused.</u> a) United's "concerns" as of 2011 are not relevant to any of the issues pleaded,</p> <p>b) the question is vague because the meaning of "concerned" cannot be ascertained, c) witness cannot be asked to</p>	<p>This is a proper refusal.</p> <p>For the same reasons as question 133 above.</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
171	109 O-31	Was United worried about the colour scheme employed in the logo, or the webpage layout (as depicted on the United.com webpage on September 3, 2011 (Exhibit 15))?	<u>Refused.</u> Whether United was "worried" as of 2011 is not relevant to any of the issues pleaded, the question is vague because the meaning of "worried" cannot be ascertained, the witness cannot be asked to express his position in terms of mental attitudes and any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.	This is a proper refusal. For the same reasons as question 133 above.	
172	109 O-32	Was United worried that the United.com webpage on September 3, 2011 might be infringing on United's trade-	<u>Refused.</u> Whether United was "worried" as of 2011 is a) not relevant to any of the	This is a proper refusal. For the same reasons as question	

Q#	Pg.	Question	Objection	Defendant's position	Plaintiff's position
		marks or copyright?	issues pleaded; b) the question is vague because the meaning of "worried" cannot be ascertained; c) witness cannot be asked to express his position in terms of mental attitudes; d) calls for a legal opinion and e) any discussions about infringement of the Plaintiff's rights are subject to solicitor-client privilege.		136 above.
E. Failure to take legal action for 15 years					
137 O-21	94	Did United contemplate legal action?	<u>Refused.</u> This information is subject to solicitor-client privilege.	<u>Relevance:</u> a) the Plaintiff alleges infringement of trademark and copyright (paras. 7-14 of amended Statement of Claim)	These are proper refusals. a) These questions relating to discussions about infringement of Plaintiff's rights and legal action are inappropriate for relating to subject matter protected by privilege.
		Why did United Airlines do nothing about it?	<u>Refused.</u> This information is subject to solicitor-client privilege.	b) yet the Plaintiff took no action regarding	

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
		Why didn't United Airlines threaten legal action?	Refused. information is subject to solicitor-client privilege.	Defendant's website for 15 years (paras. 25-33 and 56-57 of Defence);	In the context of a motion to compel, questions that fall under solicitor-client privilege need not be answered.
153 O-25	101	Did United contemplate legal action?	Refused. information is subject to solicitor-client privilege.	c) the delay may be grounds for denying equitable relief.	b) The defence of laches is not relevant since the within proceeding pertains to the redesign of the Defendant's website in 2012. Furthermore, even if the defence of laches had been applicable, it would go to the quantum of damages. Given that the Plaintiff is no longer claiming monetary compensation from the Defendant, the questions would, in any event, not be relevant.
157 O-28	103	Why did United Airlines do nothing about it (Exhibit 12)?	Refused. information is subject to solicitor-client privilege.	The Plaintiff has provided no evidence to support solicitor-client privilege on these questions.	
159 O-29	104	And why didn't United Airlines threaten legal action about it (Exhibit 12)?	Refused. information is subject to solicitor-client privilege.	This information is subject to solicitor-client privilege.	
175 O-33	111	Did United contemplate legal action?	Refused. information is subject to solicitor-client privilege.	This information is subject to solicitor-client privilege.	
179 O-35	112	(Assuming that it did not) Why did United Airlines not do nothing about (the website as it appeared in Exhibit 15), and why didn't United Airlines threaten legal action?	Refused. information is subject to solicitor-client privilege.	This information is subject to solicitor-client privilege.	

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
F. Defendant has taken steps to avoid confusion					
203 O-36	119	Just to verify, would it be fair to say that you find that this is confusingly similar to the words "United" in blue?	<u>Refused.</u> The question requires a legal interpretation.	This question does not require a legal interpretation, but is rather seeking a fact. <u>Relevance:</u>	This is a proper refusal. Answer to this question requires a legal opinion and/or expert opinion and therefore is not a proper subject for discovery. a) the Plaintiff is pleading "customers have evidenced confusion" (para.16 of Statement of Claim) b) the Defendant alleges that he has used different font colour, a pop-up dialog, and liberal disclaimers throughout his website to extinguish the theoretical possibility of confusion (para. 52 of Defence) c) answers to this question can show that the Defendant has taken sufficient steps to avoid creating confusion

O #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
G. Plaintiff brought action in bad faith					
211 O-38	123	To produce the minutes and internal correspondence of the meetings of United Airlines management regarding the discussions of United.com about the 23rd of August 2012 version of the website.	<u>Refused.</u> This information is subject to solicitor-client privilege and is not relevant to the issues pleaded.	<u>Relevance:</u> a) the Defendant raises as abuse of process (paras.59-60, 63-64, and 66 of the Defence) b) information provided in answer to these questions can demonstrate that the Plaintiff was never concerned about alleged damages but rather, the real purpose of its action was to shut down the Defendant's website, contrary to what the Plaintiff states in the Statement of Claim	This is a proper refusal. a) This question relating to discussions and documents about infringement of the Plaintiff's rights and legal action is inappropriate for relating to subject matter protected by privilege. In the context of a motion to compel, questions that fall under solicitor-client privilege need not be answered. b) This question is not relevant to any of the issues pleaded. This question is not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>c) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.</p>
212 O-39	124	To produce minutes and internal correspondence at the United Airlines about the Untied.com website.	<u>Refused.</u>	<p>This information is subject to solicitor-client privilege and is not relevant to the issues pleaded.</p>	<p>This is a proper refusal.</p> <p>a) This question relating to discussions and documents about infringement of the Plaintiff's rights and legal action is inappropriate for relating to subject matter protected by privilege.</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>In the context of a motion to compel, questions that fall under solicitor-client privilege need not be answered.</p> <p>b) This question is not relevant to any of the issues pleaded. This question is not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.</p> <p>c) Furthermore, these questions are characterized by the Defendant under the heading “Plaintiff knowingly chose to use ‘confusing domain name’”. The Plaintiff is alleging, <i>inter alia</i>, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
550-552	294-295	What sort of legal action has Amplusiate?/Has it threatened Amplusiate with such legal action? Why not?	<u>Refused.</u> Not relevant to any of the issues pleaded.	<u>Relevance:</u> a) the Defendant alleges that the Plaintiff has singled out the Defendant, using litigation to coerce the Defendant to shut down his website (para. 60 of the Defence)	These are proper refusals. a) These questions are not relevant to any of the issues pleaded. These questions are not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright infringement.
556-557	296-297	What sort of threats of legal action has United Airlines taken against Goldring Travel?/Has it taken any such legal action? Why not?	<u>Refused.</u> Not relevant to any of the issues pleaded.	b) the Defendant alleges that the Plaintiff's real purpose is to shut down the Defendant's website, rather than to preserve or defend any alleged rights under the Trade-marks Act or Copyright Act (para. 63 of the Defence).	b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, inter alia, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.
562-564	299-300	What sort of threats of legal action has United Airlines taken against change.org?/Has it taken any such legal action? Why not?	<u>Refused.</u> Not relevant to any of the issues pleaded.	The Plaintiff has provided no evidence to support solicitor-client privilege on these questions.	
565	300	Indicate whether "anything has been done" about the webpages in Exhibits 32, 33, and 34.	<u>Refused.</u> Not relevant to any of the issues pleaded.		

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
H. Right to know identity and nature of testimony of non-expert witnesses					
493-495 O-91 - O-93	263-264	What witnesses does United intend to call/what non-expert witnesses does United intend to call/what topics will they testify on?	<u>Refused.</u> This is an improper question under the Rules and is in the nature of a fishing expedition.	<p>a) the Plaintiff is required to provide information under Rule 240 (b)</p> <p>b) the requested information is specific to the identity and topics of testimony for "non-expert" witnesses</p>	<p>These are proper refusals.</p> <p>a) The Defendant is seeking answers through an improper use of Rule 240(b).</p> <p>Rule 240(b) does not compel disclosure of any witnesses and/or topics any such witnesses will they testify on.</p> <p>b) These questions also amount to a fishing expedition and are improper.</p>
I. Mootness					
545-546 O-99 - O-100	293	Does United have plans to modify the layout of its web pages at any point in the future?/ Does United have plans to modify its logo at any point in the future?	<u>Refused.</u> Not relevant to any of the issues pleaded.	Relevance: By the time the matter goes to trial, it may become moot as United changes its website.	<p>These are proper refusals.</p> <p>a) These questions are not relevant to any of the issues pleaded. These questions are not relevant to any or all of trade-mark infringement, confusion, depreciation of goodwill, and copyright</p>

Q #	Pg.	Question	Objection	Defendant's position	Plaintiff's position
					<p>b) Furthermore, these questions are characterized by the Defendant under the heading "Plaintiff knowingly chose to use confusing domain name". The Plaintiff is alleging, <i>inter alia</i>, infringement of its registered trade-marks for UNITED (registration 204,456) and UNITED AIRLINES (registration 367,179). These trade-marks were registered in 1975 and 1990, respectively, and are based on use since at least 1939, all well before the creation of the Defendant's website.</p>